

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BRENT A. ROWAN,)
Plaintiff,)
VS.)
CENTRAL LIBRARY,)
Defendant.)
No. 2:13-cv-2637-JDT-cgc

REPORT AND RECOMMENDATION

On August 15, 2013, Plaintiff Brent A. Rowan, a resident of Memphis, Tennessee, filed a *pro se* complaint captioned “Complaint for the Violations of Civil Rights Under 42 U.S.C. § 1983” against Central Library. (Docket Entry (“D.E.”) 1.) Plaintiff neglected to pay the \$400.00 civil filing fee or submit a properly completed application to proceed *in forma pauperis*. On August 19, 2013, the undersigned entered an Order directing Plaintiff to file a non prisoner *in forma pauperis* affidavit or pay the civil filing fee within thirty (30) days after the date of the Order. (D.E. #2). Plaintiff was warned that failure to comply in a timely manner would result in dismissal of this action without further notice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

As Plaintiff has neither submitted a properly completed affidavit nor paid the filing fee, it is RECOMMENDED that the Court DISMISS the complaint for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b).

The Court must also consider whether Plaintiff should be allowed to appeal this decision *in forma pauperis*, should he seek to do so. The United States Court of Appeals for the Sixth Circuit requires that all district courts in the circuit determine, in all cases where the appellant seeks to proceed *in forma pauperis*, whether the appeal would be frivolous. Twenty-eight U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.”

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). The test under 28 U.S.C. § 1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. Id. It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants, but has sufficient merit to support an appeal *in forma pauperis*. See Williams v. Kullman, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the Court to recommend dismissal of this case for failure to prosecute also compel the conclusion that an appeal would not be taken in good faith. It is therefore RECOMMENDED that the Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by Plaintiff would not be taken in good faith and Plaintiff may not proceed on appeal *in forma pauperis*.

Signed this 30th day of July, 2014.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE SAID OBJECTIONS OR EXCEPTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.